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OFFICE OF PETITIONS

In re Application of
Piperidis, Stavros
Application No. 10/537,183
Filed: June 2, 2005
Attorney Docket No. 2626

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 26, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the non-final Office action mailed November 16, 2006. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on February 17, 2007. A Notice of Abandonment was mailed June 4, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition, under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item(s) (3). In the declarations filed on March 26, 2009 and April 24, 2009, it states, "Without a UL Listing, Applicant believed that the potential market in the U.S.A. for the subject reflector would be severely restricted for any company." That statement is followed by, "Accordingly, Applicant did not respond to the Office Action in the subject application dated November 6, 2006, informing the undersigned patent attorney (who was prosecuting the application) on February 12, 2007 of the 'non-acceptance by the UL Laboratory of the U.S.A of the way the reflector is supports on the fluorescent lamp'," and, "Similarly, Applicant did not respond to the Notice of Abandonment date June 4, 2007." Petitioner follows up by stating that the applicant did not intend to abandon the instant application, which appears to be contradictory to the preceding statements. A delay resulting from a *deliberately chosen course of action* on the part of the applicant is not an "unintentional" delay within the meaning of 37 CFR 1.137(b).

Where the applicant deliberately permits an application to become abandoned (e.g., due to a conclusion that the claims are unpatentable, that a rejection in an Office action cannot be overcome, or that the invention lacks sufficient commercial value to justify continued prosecution), the abandonment of such application is considered to be a deliberately chosen course of action, and the resulting delay cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See *In re Application of G*, 11 USPQ2d 1378, 1380 (Comm'r Pat. 1989). An intentional course of action is not rendered unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken. See *In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

A delay resulting from a deliberately chosen course of action on the part of the applicant does not become an "unintentional" delay within the meaning of 37 CFR 1.137(b) because:

- (A) the applicant does not consider the claims to be patentable over the references relied upon in an outstanding Office action;
- (B) the applicant does not consider the allowed or patentable claims to be of sufficient breadth or scope to justify the financial expense of obtaining a patent;
- (C) the applicant does not consider any patent to be of sufficient value to justify the financial expense of obtaining the patent;
- (D) the applicant does not consider any patent to be of sufficient value to maintain an interest in obtaining the patent; or
- (E) the applicant remains interested in eventually obtaining a patent, but simply seeks to defer patent fees and patent prosecution expenses.

Likewise, a change in circumstances that occurred subsequent to the abandonment of an application does not render "unintentional" the delay resulting from a previous deliberate decision to permit an application to be abandoned. These matters simply confuse the question of whether there was a deliberate decision not to continue the prosecution of an application with why there was a deliberate decision not to continue the prosecution of an application.

The "unavoidable" delay and "unintentional" delay standards are not alternatives: an "unavoidable" delay is the epitome of an "unintentional" delay. A petition under 37 CFR 1.137 cannot be granted unless it meets the minimal "unintentional" delay threshold. Thus, an intentional delay precludes revival under either 37 CFR 1.137(a) (on the basis of "unavoidable" delay) or 37 CFR 1.137(b) (on the basis of "unintentional" delay). See *In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988). The record indicates that petitioner, by deliberate

intent, allowed this application to become abandoned, and that course of action precludes revival under 37 CFR 1.137.

Further correspondence with respect to this matter should be addressed as follows:

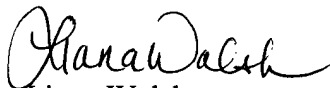
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.


Liana Walsh
Petitions Examiner
Office of Petitions